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8 UNITED STATES DISTRICT COURT
9
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 GARY S. LAYTON,

12)
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14)
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Plaintiff,

vs.

Case No. 15-cv-00840-GW(Ex)

FIRST AMENDED COMPLAINT
FOR:

16 OCWEN LOAN SERVICING, LLC,
17 A Delaware limited
18 liability company,
19 FIRST AMERICAN TITLE
20 INSURANCE COMPANY, a
21 Nebraska corporation and
22 DOES 3 through 100,
23 inclusive,
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1. Breach of Written Contract
2. Quiet Title
3. Temporary Restraining Order, Preliminary and Permanent Injunctions and Damages

Defendants,

/ / / /

/ / / /

FIRST AMENDED COMPLAINT FOR BREACH OF WRITTEN CONTRACT, ETC.

1 FIRST CAUSE OF ACTION BY PLAINTIFF, GARY S. LAYTON
2 (hereinafter referred to as "LAYTON") AGAINST DEFENDANT OCWEN
3 LOAN SERVICING, LLC, a Delaware limited liability company
4 (hereinafter referred to as "OCWEN"), FOR BREACH OF WRITTEN
5 CONTRACT:

6 1. Plaintiff is ignorant of the true names and
7 capacities, whether corporate, individual, partnership,
8 associate or otherwise, of Defendants sued herein as Does 3
9 through 100, inclusive, and therefore sues these Defendants by
10 such fictitious names. Plaintiff will amend this Complaint to
11 allege their true names and capacities when the same have been
12 ascertained. Plaintiff is informed and believes, and thereon
13 alleges, that each of the fictitiously named Defendants is
14 responsible in some manner for the events alleged herein.
15

16 2. At all times herein mentioned Plaintiff LAYTON
17 maintained his principal residence in Riverside, Riverside
18 County, California.
19

20 3. Plaintiff is informed and believes and on such
21 information and belief alleges that at all times herein
22 mentioned, Defendant OCWEN was and is a limited liability
23 company duly organized and existing under the laws of the
24 State of Delaware, and is authorized to and doing business in
25 the State of California.
26

1 4. Plaintiff is informed and believes and on such
2 information and belief alleges that at all times herein
3 mentioned, each of the Defendants was the agent and employee
4 of each of the other Co-Defendants and, in doing the things
5 herein mentioned, was acting within the scope of their
6 authority as such agents and employees and with the permission
7 and consent of their Co-Defendants. Each Defendant knew or
8 realized that the other Defendants were engaging in or planned
9 to engage in the violations of law alleged in this Complaint.
10 Knowing or realizing that other Defendants were engaging in or
11 planning to engage in unlawful conduct, each Defendant
12 nevertheless facilitated the commission of those unlawful
13 acts. Each Defendant intended to and did encourage,
14 facilitate or assist in the commission of the unlawful acts,
15 and thereby aided and abetted the other Defendants in the
16 unlawful conduct.
17
18

19 5. In October, 2001, Plaintiff LAYTON and his brother,
20 Brian Curtis Layton, who is now deceased, acquired title, as
21 joint tenants, to the real property located at 4380 Milan
22 Court, Riverside, Riverside County, California. This property
23 was the family home and Plaintiff and his brother acquired
24 title through their mother's living trust. A copy of the
25 Quitclaim Deed is attached hereto, marked Exhibit "1".
26

1 6. On or about September 16, 2005, Plaintiff's brother,
2 Brian Curtis Layton, entered into a written contract with
3 Homecomings Financial Network, Inc. consisting of a Note
4 secured by a Deed of Trust which was recorded against the real
5 property owned by Plaintiff and his brother as joint tenants,
6 located at 4380 Milan Court, Riverside, Riverside County,
7 California 92505 ("the property"). The loan did fund and
8 escrow closed on or about September 28, 2005. Plaintiff
9 LAYTON never applied for the loan, nor did he sign the Deed of
10 Trust. A copy of the deed of trust is attached hereto, marked
11 Exhibit "2".
12

13 7. Plaintiff has never signed a Grant Deed conveying his
14 interest in the property to his brother and the property
15 remained with Plaintiff and his brother as joint tenants until
16 Plaintiff's brother's death, at which time Plaintiff became
17 the sole owner.
18

19 8. Since Plaintiff's brother's death on September 15,
20 2011, Plaintiff has timely made all the monthly mortgage
21 payments, timely paid the real property taxes and maintained
22 homeowner's insurance.
23

24 9. The loan was originally serviced by GMAC. In or
25 about April or May, 2014, the servicing of the loan was
26 transferred from GMAC to Defendant OCWEN. Plaintiff never
27

1 received written notice from either GMAC or Defendant OCWEN
2 the servicing of the loan had been transferred and continued
3 making the monthly payments to GMAC. Unbeknownst to
4 Plaintiff, GMAC was forwarding the payments to Defendant
5 OCWEN.

6
7 10. In August, 2014, Plaintiff LAYTON received a
8 telephone call from a representative of OCWEN who inquired
9 about the owner of the property. Plaintiff stated he was the
10 owner of the property. The first correspondence Plaintiff
11 received from OCWEN was dated August 25, 2014, and received
12 shortly after the telephone call. That letter and all
13 subsequent letters have been addressed to Estate of Brian C.
14 Layton and mailed to the address of the property where
15 Plaintiff resides. The letter stated the August 1, 2014,
16 payment was delinquent although Defendant OCWEN had cashed the
17 check Plaintiff had sent for the August, 2014, payment. A
18 copy of the letter is attached hereto marked Exhibit "3".
19 Plaintiff received another letter from Defendant OCWEN dated
20 October 22, 2014, stating the October 1, 2014, monthly payment
21 was past due. A copy of that letter is attached hereto,
22 marked Exhibit "4". Again, Plaintiff's check had been cashed
23 by Defendant OCWEN.
24
25

26 / / / /

1 11. Plaintiff has performed all conditions, covenants
2 and promises required to be performed in accordance with the
3 terms and conditions of the Note and Deed of Trust since his
4 brother's death on September 15, 2011, and Ocwen, and its
5 predecessors in interest, accepted payments from Plaintiff
6 until March, 2015, at which time Ocwen returned Plaintiff's
7 payment stating it was unable to accept the payment. A copy
8 of that letter is attached hereto, marked Exhibit "5". Since
9 that time, Plaintiff has continued to timely make the monthly
10 mortgage payments to his attorney's trust account.
11

12 12. Defendant OCWEN, as the purported servicer on behalf
13 of the Noteholder of the Note secured by a Deed of Trust which
14 is recorded against Plaintiff's real property, breached the
15 written contract by failing to notify Plaintiff, in writing,
16 that the servicing of the Note had been transferred to it,
17 that they had no record of a homeowner's insurance policy
18 protecting the property and therefore had placed a "Lender
19 Placed" hazard insurance policy on the property for which it
20 was charging Plaintiff and by failing to accept Plaintiff's
21 timely payments since February, 2015, while accepting all his
22 payments prior to that time.
23

24 13. Pursuant to the terms of the Note and Deed of Trust
25 the Lender has the right to be paid back for its reasonable
26

1 costs and attorney's fees to enforce the Note. Therefore,
2 Plaintiff is entitled to be reimbursed for reasonable costs
3 and attorney's fees for this action, due to Defendant's
4 wrongful acts.

5 14. As a result of Defendant's breach of the contract,
6 Plaintiff has had his real property diminished in value, has
7 suffered slander of title to his property, has been placed in
8 default of payment by the refusal of Defendant OCWEN to accept
9 his payments and other damages unknown to him at this time,
10 all to his total damage in an amount unknown to him at this
11 time. Plaintiff will amend this complaint to set forth the
12 true amount of damages, according to proof at trial.
13

14 SECOND CAUSE OF ACTION BY PLAINTIFF LAYTON AGAINST
15 DEFENDANTS OCWEN AND FIRST AMERICAN TITLE INSURANCE COMPANY
16 ("First American") FOR QUIET TITLE:
17

18 15. Plaintiff hereby incorporates Paragraphs 1 through
19 13 of the First Cause of Action as though fully set forth at
20 this time.

21 16. Plaintiff is informed and believes and thereon
22 alleges that Defendant First American is, and at all times
23 herein mentioned was, a corporation duly organized and
24 existing under the laws of the State of Nebraska and is
25 authorized and doing business in the State of California.
26

1 17. At all times herein mentioned, Plaintiff was and is
2 the owner and in possession of the property commonly known as
3 4380 Milan Court, Riverside, Riverside County, California
4 92505.

5 18. The basis of Plaintiff's title is a Quitclaim Deed
6 recorded in Official Records of the County of Riverside to
7 Plaintiff and his brother Brian Curtis Layton, as Joint
8 Tenants, when the property was transferred from their mother's
9 living trust to them. Thereafter, upon the death of
10 Plaintiff's brother, Plaintiff recorded a Affidavit - Death of
11 Joint Tenant on January 20, 2012. A copy is attached hereto,
12 marked Exhibit "6".
13

14 19. Plaintiff is informed and believes and on such
15 information and belief alleges Defendant OCWEN claims an
16 interest adverse to Plaintiff in the above-described real
17 property as Defendant OCWEN claims to be the servicer of the
18 loan which is purportedly secured by a Deed of Trust recorded
19 against the real property on which Defendant First American
20 issued a policy of title insurance insuring title to be in the
21 sole name of Plaintiff's brother.
22

23 20. Plaintiff is seeking to quiet title against the
24 claims of Defendants OCWEN and First American as follows:
25 That the Deed of Trust used as security for the Note should be
26
27

1 reconveyed as neither the Deed of Trust or the note for which
2 it is security, are signed by Plaintiff. The claim of
3 Defendants are without any right whatever and Defendants OCWEN
4 and First American and the Noteholder have no right, title,
5 estate, lien or interest whatever in the above-described real
6 property or any part thereof.

7
8 21. Plaintiff seeks to quiet title as of January 20,
9 2012, as that was the date Plaintiff became the sole owner of
10 the real property.

11 THIRD CAUSE OF ACTION BY PLAINTIFF LAYTON AGAINST
12 DEFENDANTS OCWEN AND FIRST AMERICAN FOR TEMPORARY RESTRAINING
13 ORDER, PRELIMINARY AND PERMANENT INJUNCTIONS AND DAMAGES:

14 22. Plaintiff hereby incorporates Paragraphs 1 through
15 13 of the First Cause of Action and Paragraphs 16 through 21
16 of the Second Cause of Action as though fully set forth at
17 length at this time.

18
19 23. On September 28, 2005, Defendant OCWEN's
20 predecessors in interest and the holder of the Note caused a
21 Deed of Trust to be recorded against Plaintiff's real
22 property. Defendant First American issued a title policy
23 insuring that Plaintiff's brother was the sole owner of the
24 property, although Plaintiff had never executed a Grant Deed
25 transferring his interest to his brother. Defendant OCWEN has
26

1 failed to acknowledge Plaintiff's written requests to remove
2 the Deed of Trust from the real property and since February,
3 2015, has failed to accept monthly mortgage payments from
4 Plaintiff, although OCWEN, and its predecessors in interest,
5 had previously accepted all payments from Plaintiff.
6 Defendant OCWEN's refusal to accept Plaintiff's payments since
7 February, 2015, has placed Plaintiff in the position of being
8 in default and at any time Defendant OCWEN can initiate a
9 judicial or non-judicial foreclosure under the terms of the
10 Deed of Trust recorded against the property owned by
11 Plaintiff.
12 Plaintiff.

13 24. Defendant OCWEN's, and/or its predecessors and/or
14 successors in interest, conduct, unless and until enjoined and
15 restrained by order of this Court, will cause great and
16 irreparable injury to Plaintiff in that Defendant OCWEN and
17 the Noteholder continue to claim an interest in Plaintiff's
18 real property through the Note secured by a Deed of Trust, and
19 by refusing to accept his monthly payments, placing the Note
20 in default. Since March, 2015, Plaintiff has continued to
21 timely make the monthly mortgage payments to his attorney's
22 trust account.
23

24 25. If Defendant OCWEN initiates a judicial or non-
25 judicial foreclosure action because of its refusal to accept
26

1 Plaintiff's payments, Plaintiff will have no adequate remedy
2 at law for the injuries being suffered and that are being
3 threatened in that it will be impossible for Plaintiff to sell
4 or refinance the property without the removal of the existing
5 Deed of Trust and since Defendant OCWEN refuses to accept
6 payments from Plaintiff it will be impossible for him to
7 reinstate the Note by bringing the payments current in the
8 event Defendant OCWEN initiates a foreclosure action. Unless
9 Defendant OCWEN's conduct is restrained, until such time as
10 this matter is decided, and Defendants are enjoined from
11 seeking payment in full from Plaintiff or initiating and/or
12 continuing a judicial or non-judicial foreclosure action,
13 Plaintiff will suffer irreparable injury.
14

15 26. Plaintiff will be damaged so long as Defendant
16 OCWEN's wrongful conduct continues should it commence a
17 judicial or non-judicial foreclosure action. The full amount
18 of such damage is not now known to Plaintiff and Plaintiff
19 will amend this complaint to state such amount when the same
20 becomes known to him on proof thereof.
21

22 27. Plaintiff is informed and believes and thereon
23 alleges in the event Defendant OCWEN does initiate a judicial
24 or non-judicial foreclosure action, Defendant First American
25 will issue a Trustee's Sale Guarantee Policy and act as the
26

1 foreclosure Trustee under the Deed of Trust. In that event,
2 Defendant First American should also be enjoined and
3 restrained from continuing with any foreclosure action.

4 WHEREFORE, Plaintiff prays for judgment against
5 Defendants, and each of them, as follows:

6 FIRST CAUSE OF ACTION:

7
8 1. For general damages, according to proof at trial;

9 SECOND CAUSE OF ACTION:

10 2. For a judgment that Plaintiff is the owner in fee
11 simple of the real property and that Defendants have no
12 interest in the property adverse to Plaintiff;

13 THIRD CAUSE OF ACTION:

14 3. For an order requiring Defendants OCWEN and First
15 American to show cause, if any they have, why they should not
16 be enjoined as hereinafter set forth, during the pendency of
17 this action;

18
19 4. For a temporary restraining order, a preliminary
20 injunction, and a permanent injunction, all enjoining
21 Defendants, and each of them, and their agents, servants,
22 assignees and employees, and all persons acting under, in
23 concert with, or for them:

24
25 A. From enforcing the terms of the Note secured by a
26 Deed of Trust against Plaintiff;

1 B. From commencing a judicial or non-judicial
2 foreclosure action against Plaintiff until the within action
3 has been decided.

4 5. For damages, according to proof at trial;

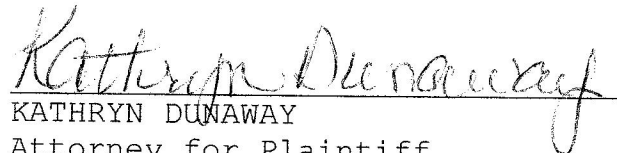
5 ALL CAUSES OF ACTION:

6 6. For interest on said damages from the date each
7 damage occurred;

8 7. For reasonable costs and attorney's fees incurred
9 herein; and
10

11 8. For such other and further relief as to the Court
12 seems just and reasonable.

13 DATED: August 7, 2015
14
15

16 
17 KATHRYN DUNAWAY
18 Attorney for Plaintiff
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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I have read the foregoing First Amended Complaint

1. Breach of Contract 2. Quiet Title 3. Temporary Restraining
Order, Preliminary and Permanent Injunctions and Damages and
know its contents.

I am the Plaintiff in this action. The matters stated in
the foregoing document are true of my own knowledge except as
to those matters which are stated on information and belief,
and as to those matters I believe them to be true.

Executed on August 7, 2015, at Riverside, California.

I declare under penalty of perjury under the laws of the
State of California that the foregoing is true and correct.

GARY S. LAYTON

A handwritten signature in cursive script, reading "Gary S. Layton", is written over a horizontal line.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF TULARE

I am employed in the County of Tulare, State of California. I am over the age of 18 and attorney of record for Plaintiff in the within action; my business address is P.O. Box 207, Three Rivers, California 93271.

On August 10, 2015, I served the attached document identified as First Amended Complaint for 1. Breach of Written Contract 2. Quiet Title 3. Temporary Restraining Order, Preliminary and Permanent Injunctions and Damages on the interested parties in this action, by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

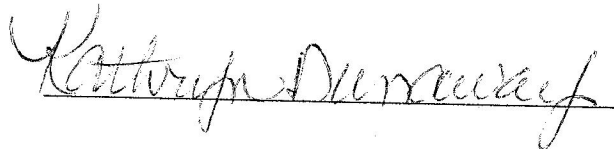
L. Bryant Jaquez, Esq., Patrick Reider, Esq., First American Law Group, 5 First American Way, 4th Floor, Santa Ana, Ca. 92707

I deposited such envelope in the mail at Three Rivers, California. The envelope was mailed by first-class mail with postage thereon fully prepaid.

Executed on August 10, 2015, at Three Rivers, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

KATHRYN DUNAWAY

A handwritten signature in cursive script, reading "Kathryn Dunaway", written over a horizontal line.